Supreme Court, U. S.
FILED
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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 19 74
No. 74-1539

JOSEPH T. WATKINS,

PETITIONER

V.

WALTER E. WASHINGTON, ET AL,

RESPONDENTS

PETITION FOR A WRIT OF CERTIORARI
To The United States Court of Appeals
For The District of Columbia Circuit

SUBMITTED BY:

JOSEPH T. WATKINS
Petitioner Pro Se
133 Claybrook Drive
Silver Spring, Md.
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INTRODUCTION

Petitioner, Joseph T. Watkins, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered on February 6, 1975, affirming an Order of the United States District Court for the District of Columbia which denied petitioner's motion to enforce a February 28, 1973 anti-employment discrimination Order.

OPINIONS BELOW

The opinion of the Court of Appeals is reported in Watkins v. Washington, 511 F. 2d 404 (1975), attached hereto as Appendix A.

The Order of the District Court which denied petitioner's motion to enforce the February 28, 1973 judgment is not reported, but is attached hereto as Appendix B.

The February 28, 1973 Order and Final Judgment is reported in Watkins v. Washington, 366 F. Supp. 941 (1973), attached hereto as Appendix C.

The initial appeal in the case is reported in Watkins v. Washington, 153 U. S. App. D. C. 298, 472 F. 2d. 1373 (1972), attached hereto as Appendix D.

JURISDICTION

The judgment of the Court of Appeals was entered on February 6, 1975. Timely motion for rehearing en banc was filed, and was denied on March 10, 1975. This Court has jurisdiction under 28 U.S.C. §1254 (1).

QUESTIONS PRESENTED

1. WHETHER A BLACK EMPLOYEE, WHO IS THE VICTIM OF RACIALLY DISCRIMINATORY EMPLOYMENT PRACTICES OF A DISTRICT OF COLUMBIA GOVERNMENT AGENCY AND WHO HAS BEEN ADJUDGED BY A DISTRICT COURT APPOINTED HEARING PANEL TO POSSESS THE OBJEC-

TIVE QUALIFICATIONS FOR A SERIES OF JOBS RANGING FROM GS-11 THROUGH GS-15, IS ENTITLED TO AN ACTUAL PROMOTION TO THE HIGHEST POSITION FOR WHICH HE IS QUALIFIED AS FULL COMPENSATION FOR THE DEPRIVATION OF HIS EQUAL EMPLOYMENT OPPORTUNITIES, OR WHETHER SAID EMPLOYEE'S REDRESS IS LIMITED TO THE FIRST VACANCY THAT OCCURS IN THE SPECIFIED RANGE OF JOBS?

2. WHERE AN EMPLOYER ENGAGES IN DISCRIMINATORY EMPLOYMENT PRACTICES, AND THE EMPLOYEE WHO IS THE VICTIM OF THE DISCRIMINATION IS ENTITLED TO ANY ONE OF A SERIES OF POSITIONS, BASED ON HIS QUALIFICATIONS, DOES THE FACT THAT THE EMPLOYER HAS FILLED THE HIGHEST POSITION DURING THE COURSE OF THE EMPLOYEE'S LITIGATION, PREVENT A FEDERAL COURT FROM VINDICATING THE LAW AND CONSTITUTION BY AWARDING THE EMPLOYEE THE HIGHEST POSITION FOR WHICH HE IS QUALIFIED?

3. WHETHER THE ULTIMATE PROMOTION OF AN EMPLOYEE WHO IS THE VICTIM OF DISCRIMINATORY EMPLOYMENT PRACTICES SHOULD BE MADE RETROACTIVE TO THE TIME HE FILED HIS ORIGINAL ACTION, WITH ADDITIONAL BACK PAY AND A SENIORITY CREDIT AWARDED TO THAT DATE, IN A CASE WHERE THE PROCESS OF SECURING AND DEFINING THE RELIEF MANDATED TO REDRESS THE DEPRIVATION OF HIS EQUAL EMPLOYMENT OPPORTUNITY RIGHTS HAS TAKEN EIGHT YEARS OF ADMINISTRATIVE AND JUDICIAL PROCEEDINGS?

STATUTORY AND REGULATORY PROVISIONS INVOLVED

Title 5, United States Code §7151,

(attached hereto as Appendix E).

Executive Order 11246, Equal Opportunity in Federal Employment, Part I, issued by President Johnson (30 Fed. Reg. 12319 (1965) (Reprinted at 42 U.S.C. §2000e), attached hereto as Appendix F.

Executive Order 11478, Equal Employment Opportunity in the Federal Government, issued by President Nixon (34 Fed. Reg. 12985 (1969), as amended by Ex. Ord. No. 11590 (36 Fed Reg. 7831 (1971), attached hereto as Appendix F.

Order No. 66-1251 issued by the Government of the District of Columbia (Equal Employment Opportunity), attached hereto as Appendix G.

STATEMENT OF CASE

In Watkins v. Washington, 153 U.S. App. D. C. 298, 472 F. 2d. 1373 (1972), the Court of Appeals held that where the job advancement of black employees in the

Housing Division of the District of Columbia's Department of Economic Development was impeded by racial discrimination, only the combination of a back pay award and an actual promotion to a position for which he is qualified can fully compensate the employee who has been deprived of equal employment opportunities. (Emphasis added). The District Court had initially refused to direct that any particular individuals (including petitioner) be promoted to specific jobs within the Housing Division, although it found that they had been discriminatorily passed over for job promotions. Likewise, the Court of Appeals in Watkins v. Washington, supra refrained from ordering specific promotions because the record was unclear as to what positions were available and whether the particular individuals involved possess-

ed the necessary qualifications for the positions. Accordingly, the Court of Appeals directed the District Court to remand the case for further administrative proceedings on petitioner's promotional status.

On remand, the District Judge entered an Order[1] as directed, but repeatedly expressed his intentions not to enforce said Order. On August 24, 1973, a hearing committee appointed pursuant to the Court's Order determined that petitioner possessed the qualifications to fill any position in the Housing Division, from GS-11 through GS-15. The committee recommended that petitioner be offered a GS-12, and that he be considered for nothing less unless petitioner personally was willing to accept a GS-11

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[1]See Order and Final Judgment in Watkins v. Washington, 366 F. Supp 941 (1973), attached hereto as Appendix C.

position. (See Hearing Panel Minutes and Determination, attached hereto as Appendix H).

On October 25, 1973, the respondents offered petitioner a GS-11 job, the minimum position for which he is objectively qualified. Petitioner neither accepted nor declined the offer, but indicated his interest in a higher position commensurate with his qualifications and the committee's findings.

On November 26, 1973, petitioner filed a pro se motion for enforcement of the February 28, 1973 remand Order, as it related to his adjudged rights. Petitioner, who was a GS-8 when he commenced litigation in this case eight years ago, was still a GS-8 when he filed his pro se motion. Ruling on the motion, the District Court enjoined respondents from offering any position

from GS-12 through GS-15 to any person other than petitioner, while the hearing committee's recommendation of August 24, 1973 was pending review by respondent Washington.

Petitioner initiated an appeal from the District Court's denial of his motion to enforce judgment. He requested the Appeals Court to determine the grade level job to which he is entitled, and to make his ultimate promotion retroactive to the time he filed his original action. During the pendency of the appeal, respondents appointed petitioner to the GS-12 position of Supervisory Housing Improvement Specialist on July 19, 1974.

On appeal again in Watkins v. Washington, 511 F. 2d 404 (D. C. Cir., 1975), the Court of Appeals held that a determination as to which grade level petition-

er is entitled to had been mooted by his appointment to a GS-12 position. The Court also held that petitioner is not entitled to have his GS-12 promotion made retroactive because he had received $3,634.47 in back pay for the time during which the respondents discriminated against him.

A timely motion for a rehearing en banc was filed, and was denied on March 10, 1975.

Petitioner seeks a review of his motion to enforce judgment, and reversal of the affirmance and Order denying said motion.

REASONS FOR GRANTING THE WRIT

"It is the policy of the United States to insure equal employment opportunities for employees without discrimination because of race, color, religion, sex, or national orgin..." Title 5,

U.S.C. §7151.[2] Discriminatory refusals to promote public employees violate the equal employment opportunities policy of the United States Government. It is clear that putting an end to such discrimination necessarily entails the actual promotion of those employees to positions for which they are qualified and would have obtained, but for illegal racial discrimination.

Since a public employee has an unequivocal right to be free from racial discrimination in promotions, he must have a concomitant right to full redress for any such discrimination. Any relief short of full redress frustrates the fair employment policy of the United States.

The United States Court of Appeals

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[2]See also Executive Order 11246 superseded by Executive Order 11478; Order No. 66-2251 issued by the Government of the District of Columbia (Equal Employment Opportunity). (Appendices F & G).

for the District of Columbia held in Watkins v. Washington, 472 F. 2d 1373 (1972) that black government employees, whose job advancement is impeded by racial discrimination, are entitled not only to back pay, but also actual promotions to positions for which the employees are qualified. An important Constitutional question arises where the employee who has been the victim of employment discrimination is qualified to fill a series of jobs, as in petitioner's case. Is the employee entitled to the highest position for which he is qualified, or is he limited to the first vacancy which occurs in the range of specified jobs?[3]

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[3]The latter proposition appears to be the Court of Appeals' holding in Watkins v. Washington, 511 F. 2d 404 (1975). The Court indicated that petitioner's appointment to a GS-12 job during the pendency of his appeal mooted the question of his entitlement to a higher GS position. Id. at 406.

The policy of equal employment opportunity outlined in 5 U.S.C. §7151 and in the Federal Executive Order Nos. 11246 and 11478 clearly mandate that the employee be awarded the highest position for which he is qualified and would have attained, but for the illegal discrimination. The fact that the discriminating employer has filled the position with a third party should not prevent a Federal Court from vindicating the Federal Constitution and laws by awarding the same or a comparable position to the employee who has been the victim of discrimination and who is objectively qualified to hold the position. Lee v. Macon Board of Education, 453 F. 2d. 1104, 1112 (5th Cir.,

1971).[4] This is particularly true when the position is filled after litigation has been commenced to remedy the discriminatory practices, as in petitioner's case.

In addition to an entitlement to the highest position for which he is qualified, an employee who has been subjected to racially discriminatory promotional practices should have his ultimate promotion made retroactive to the time he filed his original action, with additional back pay and a seniority credit awarded to that date, in a case where the pro-

---

[4]The Court of Appeals held that where an employer engages in discriminatory employment practices, and the employee discriminated against is entitled to a specific promotion, based on his/her qualifications and experience, the fact that the employer has already hired another person to encumber the position obviously cannot prevent appropriate relief by a Court of equity in vindication of the law and the Constitution. Id. at 1112.

cess of securing and defining the relief mandated to redress the deprivation of his rights has taken eight years of administrative and judicial proceedings.

Retroactivity is an integral part of the promotional relief to make it wholly effective to compensate the employee. Retroactivity is also an essential ingredient for such matters as pension rights, retirement benefits, seniority and tenure in a position. Without this aspect of relief, an employee who is forced to engage in prolonged litigation to secure a position he was entitled to at the beginning of his employment, would have no future protection against personnel reorganization schemes and reduction-in-force programs. In petitioner's case, a promotion without the retroactivity element will place him in a situation where he may acquire the contested job, but

minus the attendant adjustment in job-related benefits which he would be receiving had he not been discriminatorily denied a promotion earlier in his career.

CONCLUSIONS

For the foregoing reasons, petitioner prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered on February 6, 1975, affirming the Order of the United States District Court for the District of Columbia which denied petitioner's motion to enforce the February 28, 1973 anti-employment discrimination Order in this case, and reverse the affirmance and Order denying said motion.

Respectfully submitted,

Joseph T. Watkins

JOSEPH T. WATKINS
Petitioner Pro Se
133 Claybrook Drive
Silver Springs, Md.
20902
(301) 593-3269

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 19 74
No. _____

JOSEPH T. WATKINS,

PETITIONER

V.

WALTER E. WASHINGTON, ET AL.,

RESPONDENTS

AFFIDAVIT OF SERVICE

Before me, the undersigned Notary Public in and for said County and State, personally appeared JOSEPH T. WATKINS, who being by me first duly sworn on oath deposes and saith as follows:

1. I am the petitioner Pro Se in the above-styled case.

2. I have this 6th day of June, 1975, mailed, postage prepaid, three copies of the foregoing petition and appendices to Mr. C. Francis Murphy,

Corporation Counsel, District of Columbia

Government, District Building, Washington,

D. C., 20004.

Joseph T. Watkins

JOSEPH T. WATKINS
Petitioner Pro Se
133 Claybrook Drive
Silver Spring, Md.
20902
(301) 593-3269

DISTRICT OF COLUMBIA

Sworn to and subscribed before me
this the 6th day of June, 1975.

Ann D Collins

NOTARY PUBLIC

My commission expires on the 30th
day of November 19 76.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 19 74
No._____

JOSEPH T. WATKINS,

PETITIONER

V.

WALTER E. WASHINGTON, ET AL,

RESPONDENTS

APPENDICES TO
PETITION FOR A WRIT OF CERTIORARI

SUBMITTED BY:

JOSEPH T. WATKINS
Petitioner Pro Se
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Silver Spring, Md.
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WATKINS V. WASHINGTON
511 F. 2d. 404 (1975)

Before BASTIAN, Senior Circuit Judge, and ROBB AND WILKEY, Circuit Judges.

PER CURIAM

The appellant Watkins originally brought this action in the District Court alleging racial discrimination in the employment and personnel policies of the Housing Division of the Department of Licenses and Inspections, now the Department of Economic Development, of the District of Columbia, and seeking an award of back pay and declaratory and injunctive relief. The district judge entered judgment awarding back pay and denying all other requested relief. On appeal this court directed the District Court (1) to remand the case for further administrative proceedings on Watkins' promotional status and (2) to enter an

order enjoining further racial discrimination by the Housing Division and ordering that steps be taken to eliminate the effects of past discrimination. Watkins v. Washington, 153 U.S. App. D.C. 298, 472 F. 2d 1373 (1972).

On remand the district judge on February 28, 1973 entered an order as directed. On August 24, 1973 a hearing committee appointed pursuant to the Court's order determined

> that Mr. Watkins is entitled to a 12 position in the Housing Division at this time and should be considered for nothing less unless he personally is willing to accept a grade 11.
>
> The panel respectfully requests that this offer of a GS-12 position be offered him, not only because he is qualified for such a position, but because had he not been the object of such discrimination which the court found to be practiced against him, he would have no doubt attained an even higher grade just on his initiative and merit.

Although the committee's recommendation was subject to review by the commissioner of the District of Columbia, the Director of the District of Columbia Office of Human Rights, Department of Economic Development, voluntarily offered Watkins a GS-11 position on October 15, 1973, which Watkins declined.

On November 26, 1973 Watkins filed a pro se motion for enforcement of the order entered by the District Court on remand from this Court. Ruling on the motion, the District Court enjoined the government from offering any position from GS-12 through GS-15 to any person other than Watkins while the hearing committee's recommendation was pending final action. However, the judge denied Watkins' motions for enforcement and discovery in aid of enforcement. Watkins appealed.

During the pendency of the appeal in this Court the Commissioner of the District of Columbia on June 13, 1974 issued his final decision approving the hearing committee recommendations and ordering that the Department of Economic Development

1. Promote Mr. Watkins to the position of GS-11 Housing Improvement Specialist, now available in the Housing Division.

2. Offer Mr. Watkins the next available GS-12 position in the Housing Division.

On July 19, 1974 Watkins was appointed to the GS-12 position of Supervisory Housing Improvement Specialist.

Watkins suggests that the government has delayed in complying with the District Court's Order remanding the case for further administrative proceedings regarding his promotional status. The government answers that Watkins is

himself responsible for the delay. Our examination of the record indicates that a hearing panel be convened within thirty days. Such a panel was convened, the membership being designated jointly by the government and Watkins through his attorney. Watkins, however, was dissatisfied with the panel, and on April 4, 1973 informed the government counsel that he had dismissed his counsel and wished a new panel appointed. There is no indication that the government delayed in appointing a new panel suitable to Watkins, that the panel delayed in making its recommendations, or that the Commissioner delayed in issuing his final decision.

Watkins charges for the first time on this appeal that a GS-12 position was vacant both at the time the hearing committee issued its recommendation and at

the time he brought his motion for enforcement, and that the government did not disclose the existence of the vacancy. In support of this contention Watkins filed in this Court an affidavit by one Victor Brown who was designated by Watkins to sit on the hearing committee. On the other hand the record contains an affidavit by George Stover, Personnel Officer for the Department of Economic Development, stating that no such position was vacant at the time the hearing committee issued its recommendation, or at any time since. This factual dispute cannot be resolved in this Court.

Watkins argues that even if no positions higher than the GS-11 position he refused were vacant at the time he brought his motion for enforcement, positions could have been made available by reclassification under 5 U.S.C. §5107,

by an ad hoc adjustment of pay and other benefits, or by a supplemental stipend to be paid out of funds received from philanthropic sources. We think none of these suggestions is feasible. In any case the argument has been mooted by Watkins' appointment to a GS-12 position.

Watkins argues that his promotion should be retroactive to the time he filed his original action and that he should be awarded back pay from that date. We think this is not required, either by our previous decision, or by the District Court's Order of February 28, 1973, or by the recommendations of the hearing committee as approved by the Commissioner. Under the District Court's original judgment entered in this case Watkins has received back pay for the time during which the Housing Division discriminated against him. He has been promoted to the

first vacant GS-12 position, as recommended by the hearing committee and Commissioner. He has accordingly received all the relief to which he is entitled under his original action and the judgment entered therein which he now seeks to have enforced.

In summary, Watkins argues that the district judge abused his discretion by his ruling on the motion to enforce judgment. We do not agree.

The judgment is affirmed.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOSEPH T. WATKINS, ET AL.,

Plaintiffs

V.

WALTER E. WASHINGTON, ET AL.,

Defendants.

CIVIL ACTION NO. 2977-69

ORDER

Upon consideration of Plaintiffs' motion for injunctive relief, plaintiffs' motion to enforce judgment, plaintiffs' motion for discovery in aid of enforcement of judgment, the exhibits attached thereto, the memoranda of points and authorities in support thereof, the defendants memoranda of points and authorities in opposition to said motions including

the exhibits attached thereto, and the agreement of defendants not to offer any vacant position, at grades 12 through 15 in Housing Division to any person other than Mr. Watkins until the Commissioner has ruled on the administrative appeal taken in Mr. Watkins' case and Mr. Watkins has been served with a copy of the Commissioner's decision, it is, by the Court, this 8th day of January, 1974,

ORDERED:

1. The defendants are enjoined from offering any position from and including grade 12 to and including grade 15 in the Housing Division which may become vacant to any person other than Mr. Joseph T. Watkins until the Commissioner has ruled on the administrative appeal taken in Mr. Watkins'

case and Mr. Watkins has been served with a copy of the Commissioner's decision;

/S/ The motion for injunctive relief is in all other respects denied.

[2]

2. Plaintiffs' motion to enforce judgment is denied; and
3. Plaintiffs' motion for discovery in aid of enforcement of judgment is denied.

/S/ Gerhard L. Gesell
JUDGE

I hereby certify that a copy of the foregoing Order was mailed, postage prepaid to, Joseph T. Watkins, Plaintiff Pro Se, 133 Claybrook Drive, Silver Spring, Maryland 20902, this 7th day of January, 1974.

/S/

Assistant Corporation Counsel, D.C.
Attorney for Defendants
District Building
Washington, D.C. 20004
629-4338

WATKINS V. WASHINGTON
366 F. Supp 941 (1973)

Before Honorable Gerhard A. Gesell,
United States District Judge

ORDER AND FINAL JUDGMENT

In accordance with the evidence of record, with the findings of this Court on July 6, 1971, and with the Opinion and Order of the United States Court of Appeals for the District of Columbia Circuit, it is hereby ORDERED that:

1. Defendants Walter E. Washington and Julian R. Dugas, their agents, officer, successors in office, employees, and all persons acting in concert with them be and are hereby permanently enjoined from engaging in any employment practices in the Housing Division of the Department of Economic Development (formerly Housing Division of the Department of Licenses and Inspections) including recruitment, hiring, appointment, training, promotion,

transfer to or from the Housing Division, disciplinary action, retention, or any other personnel action, for the purpose or with the effect of discriminating against any employee or applicant or potential applicant for employment on the ground of race or color.

II. It is further ORDERED that the defendants shall, within 90 days from the date of this Order, cause to be paid to the following persons the following sums:

Mr. Baxter O. Hargrave	$ 987.14
Mr. Ezell M. Harvell	987.14
Mr. Robert Higginbotham	448.70
Mr. Coleman S. Holmes	3,679.34
Mr. Thomas I. Jones	3,365.25
Mr. Edward Mosley	3,140.90
Mr. Marcario S. Somera	942.27
Mr. Carroll A. Swanson	2,961.42
Mr. James R. Talley	1.480.71
Mr. Frederic W. Thomas	3,320.38
Miss Roberta M. Tinnen	3,679.34
Mr. Percy W. Tucker	448.70
Mr. Joseph T. Watkins	3,634.47
Mr. Nathaniel Wright	3,320.38

III. It is further ORDERED that the defendants shall:

(1) Determine, within 14 days from

the date of this Order, the wages lost by Mr. Edward Mosley and Mr. Percy Tucker during the period of their suspension from the Department of Licenses and Inspections and shall pay such wages within 90 days from the date of this Order to Mr. Mosley and Mr. Tucker with interest at the rate of 6% commencing from the date of such suspensions.

(2) Remove all records of reprimands or other disciplinary actions in the personnel folders of Messrs, Frederic Thomas, Edward Mosley, and Percy Tucker.

IV. It is further ORDERED that the defendants convene a Hearing Committee for the purpose of determining the promotional status of employees Joseph T. Watkins and Marcario Somera. That hearing panel shall be selected in the manner provided in Commissioner's Order 66-1251. The panel shall be instructed to review

the present position structures of the Department, and may, in its discretion, acquire the assistance of a personnel specialist to determine the availability of current positions within the Housing Division of the Department of Economic Development consistent with the qualifications and experience of Mr. Watkins and Mr. Somera. The hearing panel shall be convened within 30 days of the date of this Order, and Mr. Watkins, Mr. Somera, and/or their representatives shall be afforded the opportunity to appear before the panel for the purpose of representing their qualifications and experience for any positions currently available within the Housing Division of the Department of Economic Development. At such time as suitable positions commensurate with the qualifications and experience established above are determined to be available, Mr.

Watkins and Mr. Somera shall be immediately offered such positions. The hearing panel considering current position availability within the Housing Division of the Department of Economic Development shall be conducted as a special administrative hearing board under Commissioner's Order 66-1251 subject to review by the Mayor and then, if requested by plaintiffs, this Court.

V. To insure that the effects of past discrimination will be eliminated and there will be no discrimination in the future, the defendants are further ORDERED to:

(1) Formulate, within 60 days from the date of this Order, precise and reasonable Qualification Standards for every position in the Housing Division of the Department of Economic Development, and shall submit said standards to counsel

for plaintiffs. Within 75 days from the date of this Order, a copy of such Qualification Standards shall be posted in each office of the Housing Division and a copy shall be sent to each employee of the Housing Division. In the event any new positions are created within the Division, within 30 days of their creation the qualifications for such new positions shall be formulated and added to the Qualification Standards which shall thus be kept current, and the current Standards shall be those posted. A copy of Qualification Standards shall be submitted to each applicant for appointment for any position in the Housing Division.

(2) Keep a written list of each applicant for employment in the Housing Division of the Department of Economic Development showing such applicant's name, address, race, and qualifications.

The list shall show by whom the applicant was interviewed, and the final disposition of the application. If the applicant is rejected, a written notice shall be given the applicant stating whether the rejection was because of (a) lack of vacancies, or other stated reasons, for positions in the Division for which the applicant is qualified, or (b) lack of qualification of the applicant for any existing vacancies. If the applicant is rejected for failure to qualify for an existing vacancy, the applicant shall be notified wherein his qualifications were lacking by reference to the Qualification Standards, and if the rejection is based on the superior qualifications of another applicant, the rejected applicant shall be notified. If there is no vacancy for a qualified applicant, the application shall be kept on file for four years and, as

vacancies occur, they shall be offered to qualified applicants on the list on the basis of the earliest dates of application; provided that no applicant on the list shall be offered a position under this paragraph unless all qualified applicants for promotion are rejected in accordance with the provision of paragraph VI(2) of this Order.

(3) Formulate, within 60 days of this Order, a promotion plan that permits non-white employees to qualify for any any all positions in the Housing Division of the Department of Economic Development based upon experience and education. Such plan shall give no weight to present GS classifications held by non-white employees hired by the former Department of Licenses and Inspections prior to January 1, 1964, and shall not exempt non-whites who are ex-employees who have five or

more years of experience prior to leaving the former Department of Licenses and Inspections.

VI. The defendants are hereby enjoined from making any appointments in the Housing Division which have not been the subject of a Vacancy Announcement as described herein. The defendants are ORDERED to:

(1) prepare Vacancy Announcements for any positions open in the Housing Division of the Department of Economic Development and post such Vacancy Announcements in at least three prominent places within the Division. Such Vacancy Announcements shall show the grade and title of the vacant position and shall describe the qualifications required for that position in the same terms in which the position is described in the Qualification Standards referred to herein in para-

graph V(1). The Vacancy Announcement shall set forth a date on which the Housing Division shall begin to consider filling the position, and that date shall be no sooner than seven days from the date of posting of the Announcement. No appointment shall be made to any position which has not been described in those Qualification Standards and for which a Vacancy Announcement has not been prepared in accordance with the terms of this Order.

(2) Subject to the provisions of paragraph V(2) of this Order, a position noticed in a Vacancy Announcement shall be awarded as follows: If there is more than one qualified applicant for the position, the promotion shall be awarded to the applicant with the greatest seniority in the Housing Division, unless there is a specific reason for not awarding

such applicant the position. In computing seniority, 30 credits at an accredited college shall be equal to one year's seniority. In the event the promotion is not awarded the qualified applicant with the greatest seniority, written notice shall be given to such applicant stating (a) that such applicant was the most senior qualified applicant; (b) that such applicant was passed over for the position; and (c) the reason why such applicant was passed over for the promotion. All such notices of rejection shall include a copy of this Final Judgment and Order. In the event the applicant with the greater seniority is not accepted, the appointment shall go to the applicant with the next highest seniority, subject to the Housing Division's authority to reject qualified applicants under the conditions set forth herein.

VII. It is further ORDERED that the defendants shall keep and maintain intact all records required or necessary to be kept hereunder available for inspection and copying as may be ordered by a Court.

VIII. It is further ORDERED that the defendants shall post a notice in at least three prominent places within the Housing Division stating that (1) the Housing Division of the Department of Economic Development has been prevented by the United States District Court for the District of Columbia from engaging in any employment practices for the purpose or with the effect of discriminating against any employee or applicants or potential applicants for employment on the ground of race or color, and (2) that a copy of the Order and Final Judgment of the Court is available in a named office

of the Housing Division for inspection and copying by any person.

IX. It is further ORDERED that plaintiffs' counsel may make application for reasonable attorney's fees and costs incurred in this proceeding.

X. This Order and Final Judgment shall be in full force and effect for a period of three years commencing April 1, 1973; provided, however, that the injunction specified in paragraph I shall be immediately effective and permanent, as stated.

XI. The parties, or either of them, may make application to the U. S. District Court for the District of Columbia at any time to modify, interpret or enforce the Order or any part hereof.

Gerhard A. Gesell
JUDGE

WATKINS V. WASHINGTON
472 F. 2d 1373 (1972)

Before Mr. Justice CLARK and WRIGHT and WILKEY, Circuit Judges.

J. SKELLY WRIGHT, Circuit Judge:

Joseph Watkins, a housing inspector for the District of Columbia, filed a complaint under the District's Equal Employment Opportunity Order alleging that the Housing Division of the Department of Licenses and Inspections (now a part of the Department of Economic Development) discriminated against nonwhites in hiring, promotion and other personnel policies. Hearings were held before a three-member Hearing Committee which rendered its report and recommendaticns to the Commissioner for the District of Columbia. The Committee found that the evidence amply supported the charge that the Housing Division had engaged in a pattern of racial discrimination and rec-

ommended that employees who suffered as a result of such discrimination be compensated through monetary compensation and/or promotions. Subsequently the Equal Employment Opportunity Officer for the District of Columbia made an independent investigation of the matter and submitted his findings to the Commissioner. He too found a pervasive pattern of racial discrimination and recommended an award of back pay to all nonwhite employees whose promotional opportunities were restricted by racial discrimination, actual promotions for Watkins and three other nonwhite employees, and mandatory reporting procedures and monitoring of the Housing Division to ensure the elimination of discrimination.

The Commissioner, in his report, agreed that the evidence showed a pattern of racial discrimination, but refused to

order any relief whatever, finding that conditions which impaired equal employment opportunity in the Department of Licenses and Inspections had already been eliminated. Watkins then brought this class action lawsuit in the District Court to set aside the Commissioner's report and to obtain other appropriate relief. The District Court, after independently reviewing the administrative record, found that the allegations of racial discrimination were fully substantiated by the evidence. The Court granted the following affirmative relief: The sum of $32,400 was awarded to 14 named past and present nonwhite employees of the Housing Division. Two nonwhite employees who had been disciplined by suspension were awarded wages for the period of suspension, and certain records of disciplinary action were ordered removed from the per-

sonnel folders of three nonwhite employees. Finally, the Chief of the Bureau of Building, Housing and Zoning was directed to prepare a comprehensive report of steps taken to eliminate the effects of past discrimination and to ensure nondiscrimination in the future, the report to be given to the Commissioner, and the Commissioner was directed to eliminate any discrimination.

The Court declined to grant certain relief requested by Watkins, including immediate promotion for Watkins and another nonwhite employee named Somera, the only two employees who allegedly had been denied promotions because of race and were still employees; recission of a specific promotion of a white employee; disciplinary action against persons still employees who were found to have perpetrated the system of racial

discrimination; and an injunction against further acts of discrimination and retention of jurisdiction. Cross appeals then brought the case to this Court.

We need not dwell at length on the discriminatory practices alleged to have occurred in the Housing Division. Suffice it to say that the record amply demonstrates that racial discrimination was serious and long-standing, often subtle, yet always pervasive. Indeed the Commissioner and the Division have conceded that prior to 1968 racial discrimination in the Division was rampant. The record also supports the District Court's conclusion that all of the 14 named past and present employees of the Housing Division were harmed by the discriminatory promotional policies. The Court acted well within its powers in deciding to compensate these individuals

for the harm suffered through a back pay award, and the Court's method of calculating back pay seems reasonable in light of the consistent and widespread discrimination evidenced in this record. Accordingly we affirm the District Court's damage award.

The District Court refused to direct that any particular individuals be promoted to specific jobs within the Division. We agree that the District Court is an inappropriate forum to decide, in the first instance, whether particular employees deserve specific job positions, since it is unclear from the present record what job positions are now available within the Division and whether the particular individuals involved possess the necessary qualifications for those positions. However, those employees who were harmed by past

discriminatory practices should be given an opportunity to demonstrate to the same Hearing Committee that initially heard this case, subject to review by the Commissioner and then by the District Court, that they are qualified for promotions to positions now available within the Division. Implicit in the District Court's conclusion that a back pay award was appropriate was a determination that advancement for nonwhite employees had been impeded by racial discrimination, i.e., that qualified nonwhites had been passed over when promotions were granted. Back pay, of course, does not fully alleviate the effects of illegal discrimination on these employees since they are left in the lower paying jobs to which past racial discrimination confined them. Only the combination of a back pay award and an actual promotion for which he is

qualified can fully compensate an employee who has been deprived of equal employment opportunity. Accordingly, the District Court should remand this matter to the Hearing Committee that initially heard it, or to another appropriate administrative forum, to determine the promotional status of employees Watkins and Somera.

The final question in this case concerns the District Court's refusal to issue an injunction against racial discrimination and to retain jurisdiction until all steps had been taken to elimimate the effects of past discrimination and to ensure nondiscrimination in the future. Issuance of an injunction or other equitable relief is normally entrusted to the sound discretion of the District Court, and its decision accordingly merits great deference. The facts

of the present lawsuit are such, however, that we believe it was manifestly unjust to deny an injunction and to refuse to retain jurisdiction. Where pervasive racial discrimination is demonstrated, the Court has not only the power, but also the duty, to render a decree eliminating the effects of past discrimination and ensuring equal opportunity in the future. Louisiana v. United States, 380 U.S. 145, 85 S. Ct. 817, 13 L. Ed. 2d 709 (1965). That there is a new Director of the Housing Division who has taken steps to ensure equal employment opportunity does not justify denying affirmative equitable relief. The period of nondiscrimination since 1968 is very brief compared to the long record of discrimination demonstrated in this case, and even if the new supervisors are entirely in good faith the task of eliminat-

ing ingrained discriminatory practices is a difficult one deserving of active judicial support. See United States v. Int. Brhd of Elec. Wkrs, Local No. 38, 6 Cir., 428 F. 2d 144, 151, cert. denied, 400 U.S. 943, 91 S. Ct. 245, 27 L. Ed. 2d 248 (1970). Appellant Watkins, who has for six years waged an almost single-handed battle against racial discrimination in the Housing Division, deserves a clear response from the Courts. See Lankford v. Gelston, 4 Cir., 364 F. 2d 197 (1966). He should not have to face the prospect of an entirely new lawsuit should the Division and the Commissioner fail to root out and keep out discrimination.

Accordingly, the judgment of the District Court is affirmed, subject to the following modifications. The District Court is directed to remand the question of the promotional status of employees

Watkins and Somera to the Hearing Committee or other appropriate administrative forum. The Court is also directed to issue an appropriate order enjoining the Housing Division from further acts of racial discrimination and ordering the Division to take steps necessary to ensure that the effects of past discrimination will be eliminated and that there will be no discrimination in the future, the order to provide that the Court will retain jurisdiction to enforce its Order.

It is so ordered.

TITLE 5, UNITED STATES CODE §7151

"It is the policy of the United States to insure equal employment opportunities for employees without discrimation because of race, color, religion, sex, or national orgin. The President shall use his existing authority to carry out this policy..."

EXECUTIVE ORDER NO. 11246
PART I

[Superseded by]

EXECUTIVE ORDER NO. 11478
(As amended by Ex. Ord. No. 11590, Apr. 23, 1971, 36 F.R. 7831)

EQUAL EMPLOYMENT OPPORTUNITY IN FEDERAL GOVERNMENT

"It has long been the policy of the United States Government to provide equal opportunity in Federal employment on the basis of merit and fitness and without discrimination because of race, color, religion, sex, or national orgin. All recent Presidents have fully supported this policy, and have directed department and agency heads to adopt measures to make it a reality.

As a result, much has been accomplished through positive agency programs to assure equality of opportunity. Additional steps, however, are called for in order to strengthen and assure fully

equal employment opportunity in the Federal Government.

NOW, THEREFORE, under and by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

Section 1. It is the policy of the Government of the United States to provide equal opportunity in Federal employment for all persons, to prohibit discrimination in employment because of race, color, religion, sex, or national orgin, and to promote the full realization of equal employment opportunity through a continuing affirmative program in each executive department and agency. This policy of equal opportunity applies to and must be an integral part of every aspect of personnel policy and practice in the employment, development, advancement, and treat-

ment of civilian employees of the Federal Government.

Sec. 2. The head of each executive department and agency shall establish and maintain an affirmative program of equal employment opportunity for all civilian employees and applicants for employment within his jurisdiction in accordance with the policy set forth in section 1. It is the responsibility of each department and agency head, to the maximum extent possible, to provide sufficient resources to administer such a program in a positive and effective manner; assure that recuritment activities reach all sources of job candidates; utilize to the fullest extent the present skills of each employee; provide the maximum feasible opportunity to employees to enhance their skills so they may perform at their highest potential and ad-

vance in accordance with their abilities; provide training and advice to managers and supervisors to assure their understanding and implementation of the policy expressed in this Order; assure participation at the local level with other employers, schools, and public or private groups in cooperative efforts to improve community conditions which affect employability; and provide for a system within the department or agency for periodically evaluating the effectiveness with which the policy of this Order is being carried out..."

Richard Nixon

ORDER NO. 66-1251

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE
WASHINGTON, C. C.

August 25, 1966

"SUBJECT: Equal Employment Opportunity Commissioners, D. C.

ORDERED:

WHEREAS, the U. S. Civil Service Commission has promulgated regulations superseding the regulations of the President's Committee on Equal Employment Opportunity in consonance with Executive Order 11246, dated September 24, 1965, and,

WHEREAS, the Commissioners of th Government of the District of Columbia are resolved that no effort be spared to continue and to strengthen their policy according equal employment opportunity to all persons regardless of race, creed, color, or national orgin, and regardless

of sex or age except when restrictions as to sex or age are required and justified, it is hereby ORDERED that the following regulations are established governing complaints of discrimination resulting from matters occurring on or after April 3, 1966:

1. SCOPE

The provisions of these regulations shall apply to all departments and agencies under the full administrative jurisdiction of the Board of Commissioners and are strongly commended for adoption by those District Government departments and agencies which are not subject to the Commissioners' full administrative jurisdiction.

2. COVERAGE

The provisions of these regulations shall govern the processing of any complaint of discrimination on grounds of

race, creed, color, national orgin, age, or sex in connection with any aspect of District Government employment and, except as otherwise indicated herein, shall be equally applicable with respect to employees of District departments subject to the joint regulations and to employees of District departments subject by statute to civil service laws and regulations.

3. POLICY

a. It is the policy of the Government of the District of Columbia:

(1) To provide equal employment for all qualified persons, to prohibit discrimination in employment because of race, creed, color, or national orgin and to promote the full realization of equal employment opportunity through a positive, continuing program in each department and agency of the District

Government. The policy of equal employment opportunity applies to every aspect of District Government employment.

(2) To provide the same assurances of equal employment opportunity to all qualified persons regardless of sex or age, prohibiting discrimination in employment because of sex or age, except when justified by unusual employment conditions or circumstances and when required upon the approval of the U. S. Civil Service Commission.

(3) To require that the head of each District department and agency take affirmative action within his department or agency to assure equal opportunity in every aspect of employment ...."

By order of the Board of Commissioners, D. C.

/S/ F.E. Rapshaw
Secretary to the Board

In the matter of: JOSEPH T. WATKINS Plaintiff VS. WALTER E. WASHINGTON ET AL Defendants

Minutes of Panel Meeting Thursday, August 23, 1973

The panel met at 10:30 A.M. for the purpose of concluding the responsibilities outlined for it in the Order and Final Judgment signed by the Honorable Judge Gehard A. Gesell for the United States District Court for the District of Columbia, on February 28, 1973.

The order of buisness was outlined by the Chairman, Mr. Holliman together with the procedure to be followed. As

outlined the order of business consisted of:

1. To decide if the Hearing would be reopened for the purpose of admitting new evidence oral or written;
   (a) to decide whether or not the new Submissions including the Department Position and offer and the affidavits from various Supervisors, administrative officers and retired supervisors would be accepted and entered as evidence or rejected.
2. To review the material requested the plaintiff as to his community activities, and decide if these activities do indeed meet the Departments stated require-

ments for General Experience.

Panel's Action

1. On the first agenda item the panel (majority) voted not to reopen the Hearing for the purpose of receiving further testimony from the plaintiff or from the respondents. And on sub-item (a) the question of whether to include or exclude the material presented in behalf of the Department, it was voted also to exclude that material as evidence (majority vote).
2. On item 2 of the agenda, it was voted (unanimous vote) to compare the qualifications of the plaintiff Mr. Watkins as presented in his personnel folder together with his notorized list of other related activities with

his notorized list of other related activities with the Qualification Standards of the Department and the position description of each position beginning with that of grade GS 11 and continuing through GS-15, and to list each position and state after each whether the panel adjudged the plaintiff "qualified" or "unqualified." The results follow:

Position & Grade	Qualified	Vacancies Listed
1. Housing Improvement Officer GS-11	Yes	2
2. Liaison Officer CSAC GS-11	Yes	0
3. Program Analyst GS-11	Yes	0
4. Supervisory Housing Inspector GS-12	Yes	0

Position & Grade	Qualified	Vacancies Listed
5. Chief Program & Planning Branch GS-12	Yes	0
6. Deputy Housing Administrator GS-13	Yes	0
7. Housing Administrator GS-15	Yes	0

The panel (majority decision), after reviewing each position listed and comparing the Plaintiff's (Mr. Watkins) academic, general, and specialized qualifications as presented in his personnel folder and his affidavit dated August 6, 1973, did find Mr. Watkins qualified to fill any position from GS-11 through GS-15.

This action by the panel was taken in accordance with the Order of the Honorable Judge Gesell, in accordance with his Order and Final Judgment, Civil Action 2977-69, Section IV Paragraph I, which reads thusly: "The panel shall be

instructed to review the present position structures of the Department, and may, in its discretion, acquire the assistance of a personnel specialist to determine the availability of current positions within the Housing Division of the Department of Economic Development consistent with the qualifications and experience of Mr. Watkins and Mr. Somera...." At such time as suitable positions commensurate with the qualifications and experience established above are determined to be available, Mr. Watkins and Mr. Somera shall be immediately offered such positions.

Panel's Finding and Recommendation

The panel, after considering the length of service Mr. Watkins has given the Department, nineteen (19) years; the fact that due to a pattern of direct discrimination found by the Courts to have

been practiced against Mr. Watkins, a practice which has permitted him to attain a grade level of GS-8, while many of his co-workers with no more and, in cases, less service and less qualifications, have attained much higher grades and considering the fact that Mr. Watkins has successfully completed approximately two hundred and thirty-six college credits - the equivalent of 7 2/3 years of additional seniority, and he has also attained a yearly satisfactory rating and a sufficient level of competence for in grade raises yearly, the panel is of the opinion that Mr. Watkins is entitled to a GS-12 position in the Housing Division at this time and should be considered for nothing less unless he personally is willing to accept a grade 11.

The panel respectfully requests that this offer of a GS-12 position be offered

him, not only because he is qualified for such a position, but because had he not been the object of such discrimination which the Court found to be practiced against him, he would have no doubt attained an even higher grade just on his initiative and merit.

Therefore, in the spirit of the order of the United States District Court for the District of Columbia, and in the interest of justice and fairness the panel urges Department of Economic Development, Housing Division to implement this recommendation speedily, thus bringing to an end the ugly and deletorious practice of discrimination this plaintiff has suffered for several years.

Respectfully submitted this 24th day of August, 1973, by

/S/
A. GRIFFIN HOLLIMAN, CHAIRMAN

/S/
VICTOR BROWN

CHARLES E. MORGAN

In the Matter of:

JOSEPH T. WATKINS

Plaintiff

VS.

WALTER E. WASHINGTON, ET AL

Defendants

DETERMINATION

Authority

In accordance with the Order of the Honorable Judge Gerhard A. Gesell, dated February 28, 1973, Civil Action 2977-69, this hearing committee was appointed pursuant to Commissioners Order 66-1251 "to determine the availability of current positions within the Housing Division of the Department of qualifications and experience of Mr. Watkins..."

Finding and Recommendation

The panel, after considering the

length of service Mr. Watkins has given the Department, nineteen (19) years; the fact that due to a pattern of direct discrimination found by the Courts to have been practiced against Mr. Watkins a practice which has permitted him to attain a grade level of GS-8, while many of his co-workers with no more and, in cases, less service and less qualifications, have attained much higher grades and considering the fact that Mr. Watkins has successfully completed approximately two hundred and thirty-six college credits - the equivalent of 7 2/3 years of additional seniority, and he has also attained a yearly satisfactory rating and a sufficient level of competence for in grade raises yearly, the panel is of the opinion that Mr. Watkins is entitled to a GS-12 position in the Housing Division at this time and should be considered for nothing

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Therefore, in the spirit of the Order of the United States District Court for the District of Columbia, and in the interest of justice and fairness the panel urges Department of Economic Development, Housing Division to implement this reccomendation speedily, thus bringing to an end the ugly and deletorious practice of discrimination this plaintiff has suf-

fered for several years.

Respectfully submitted this 24th day of August, 1973, by

/S/
A. Griffin Holliman, Chairman

/S/
VICTOR BROWN

CHARLES E. MORGAN